

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

John Parks Simpson and Freda Simpson,
wife,

Plaintiffs,

v.

Air Liquide America, LP, Celite
Corporation, Mine Safety Appliances
Company, Porter Warner Industries, LLC,
Wesco Refractoriers, inc., and John Doe 1-
5,

Defendants.

Civil Action No.
3:09-CV-172-FDW-DSC

**PLAINTIFFS' AND DEFENDANT AIR LIQUIDE AMERICA, LP'S JOINT MOTION
FOR ENTRY OF CONSENT ORDER VOLUNTARILY DISMISSING DEFENDANT
AIR LIQUIDE AMERICA, LP WITHOUT PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiffs and Defendant Air Liquide America, LP ("Air Liquide") jointly move this Court for an order dismissing without prejudice Air Liquide as a party to this action and state as follows:

Plaintiffs instituted this product liability action, naming Air Liquide and a number of other parties as Defendants. At this stage of the discovery process, Plaintiffs and Air Liquide have determined and agreed that Air Liquide should be dismissed without prejudice. Specifically, discovery thus far has produced no identification of any product of Air Liquide or any predecessor of Air Liquide that could have potentially caused Plaintiff John Parks Simpson's alleged injuries.

The voluntary dismissal of parties who have answered the Complaint requires a Court order pursuant to Federal Rule of Civil Procedure 41(a)(2). The parties respectfully submit that

the Court should exercise its discretion in dismissing Air Liquide from this action because no product of Air Liquide or Air Liquide's predecessors has been identified as being at issue in this litigation. Should such evidence emerge during further discovery, Plaintiffs intend to re-file their claims against Air Liquide as the rules permit. Accordingly, Plaintiffs and Air Liquide request that the Court enter the attached proposed order designating this voluntary dismissal as Plaintiffs' first voluntary dismissal of Air Liquide, which will not operate as an adjudication on the merits pursuant to Federal Rule of Civil Procedure 41(a)(1)(B).

CONCLUSION

For the foregoing reasons, Plaintiffs and Air Liquide respectfully request that this Court grant their Joint Motion to voluntarily dismiss without prejudice Defendant Air Liquide America, LP and enter the proposed Order attached hereto.

Jointly and respectfully submitted this 23rd day of July, 2010 by:

JEKEL-DOOLITTLE, LLC

MOORE & VAN ALLEN PLLC

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Consented to by:

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CERTIFICATE OF SERVICE

The undersigned attorney does hereby certify that the foregoing **PLAINTIFFS' AND DEFENDANT AIR LIQUIDE AMERICA, LP'S JOINT MOTION FOR ENTRY OF CONSENT ORDER VOLUNTARILY DISMISSING DEFENDANT AIR LIQUIDE AMERICA, LP WITHOUT PREJUDICE** and proposed **ORDER** was filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following attorneys of record:

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This 23rd day of July, 2010.

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